

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jesus Moreno, Manuel Ramirez, and Jesus Barajas

(b) County of Residence of First Listed Plaintiff Wasatch County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Paul Tsosie, Tsosie & Hatch 7864 S. Redwood Rd. West Jordan
Ut, 84088; Phone # (801) 676-0863

DEFENDANTS

Zitting Brothers Construction, INC., Samuel Zitting, and Jared Zitting

County of Residence of First Listed Defendant Washington County
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	TORTFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 201 and 29 U.S.C. § 203 (d)Brief description of cause:
Plaintiff's want to recover unpaid overtime wages and liquidated damages

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

December 29, 2008

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

JESUS MORENO, MANUEL RAMIREZ, AND
JESUS BARAJAS, ON BEHALF OF THEMSELVES
AND OTHERS SIMILARLY SITUATED,

Plaintiffs

v.

ZITTING BROTHERS CONSTRUCTION, INC.,
SAMUEL ZITTING, AND JERED ZITTING,

Defendants

Case No. _____

ORIGINAL COMPLAINT

SUMMARY

1. Zitting Brothers Construction, Inc., Samuel Zitting, and Jered Zitting (collectively the "Builders") do not pay overtime to their employees. Instead, the Builders pay their employees the same hourly rate for all hours worked in some weeks and pay a piece rate in other weeks. The Builders' payroll scheme, however, is illegal because the Builders fail to pay one-and-one half times their employees' regular rates for hours they work in excess of forty in a week. *See* 29 U.S.C. § 201, *et seq.*

2. Accordingly, Jesus Moreno, Manuel Ramirez and Jesus Esquivel Barajas (the "Laborers"), bring this action to recover unpaid overtime wages, liquidated damages, attorney's fees and costs.

JURISDICTION AND VENUE

3. This Court has jurisdiction because the Laborers' claims arise under federal law.

4. Venue is proper because the defendants reside in this District and a substantial part of the acts and omissions giving rise to the Laborers' claims occurred in this District.

THE PARTIES

5. The Laborers are former employees of the Builders. Their written consents are attached.

6. The class of similarly situated employees consists of employees who were paid by the hour or by the piece and who worked over forty hours in at least one workweek but were not paid one-and-one-half times their regular rate for those hours. These similarly situated persons are referred to as the "Class Members."

7. Zitting Brothers Construction, Inc. ("Zitting Brothers") is a Utah corporation. Zitting Brothers may be served with process by serving its registered agent, Samuel Zitting, 256 West 100 South, Hurricane, Utah 84737.

8. Samuel Zitting is an individual who may be served with process at 256 West 100 South, Hurricane, Utah 84737.

9. Jered Zitting is an individual who may be served with process at 710 North 200 West 10-11, Hurricane, Utah 84737.

COVERAGE FACTS

10. The Builders employed the Laborers and the Class Members within the meaning of the FLSA. *See* 29 U.S.C. § 203(d).

11. The Builders suffered or permitted the Laborers and the Class Members to work, set their schedules, set their pay rates, provided their tools and equipment, and determined their job locations.

12. The Laborers and the Class Members were employed by the Builders on a permanent basis. The Laborers and the Class Members performed routine manual labor. Their level of investment was nominal compared to the Builders' investment.

13. Zitting Brothers is an enterprise within the meaning of the FLSA. *See* 29 U.S.C. § 203(r).

14. Zitting Brothers is an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA. *See* 29 U.S.C. § 203(s)(1).

15. The Builders' employees, including the Laborers, engage in commerce or in the production of goods for commerce. Further, the Builders' employees handle, sell, or otherwise work on goods or materials that have been moved in or produced for commerce. For example, the Builders' employees handle or work on goods such as power tools, hammers, nails, and lumber that crossed (or were produced with the intention of crossing), state lines.

16. For at least the past three years, the gross volume of sales made or business done by Zitting Brothers has exceeded \$500,000.

17. Samuel Zitting and Jered Zitting own and operate Zitting Brothers and are part of an enterprise engaged in commerce with Zitting Brothers.

THE LABORERS' ALLEGATIONS

18. The Builders are in the commercial and residential construction business. The Laborers were employed by the Builders as manual laborers. The Laborers' job duties included framing, detail work, and other general duties related to the construction of buildings and homes.

19. The Laborers were full-time, nonexempt employees of defendants. The Laborers worked in excess of forty hours per week.

20. The Builders paid the Laborers by the hour in most weeks and by the piece in the remaining weeks. The Builders were required to pay the Laborers overtime compensation at one-and-one-half times their *regular rates* for all hours worked in excess of forty hours in a week.

21. Instead, in most weeks, the Builders paid the Laborers the same hourly rate for all hours worked, even for those worked in excess of forty hours in a workweek.

22. The Builders knew or showed reckless disregard for whether their payroll scheme violated the FLSA.

COLLECTIVE ACTION ALLEGATIONS

23. The Builders also employed the Class Members. The Class Members performed job duties similar to the Laborers and worked in excess of forty hours per week. The Builders paid these employees in the same way they paid the Laborers.

24. The Class Members are owed overtime pay for the same reasons as the Laborers. The Builders' failure to properly pay overtime to the Laborers and the Class Members results from a common practice. Notice of this collective action is, therefore, properly sent to:

All employees who were paid by the hour or by the piece who, in at least one workweek, worked more than 40 hours.

CAUSE OF ACTION

25. The Laborers incorporate the allegations in paragraphs 1-24 as if set forth here.

26. The Builders violated the FLSA by failing to pay the Laborers and the Class Members overtime compensation for hours worked in excess of forty hours in a week. Accordingly, the Laborers and Class Members who worked more than forty hours in a week are entitled to recover their unpaid overtime.

27. The Laborers and the Class Members are also entitled to an amount equal to their unpaid overtime wages as liquidated damages, attorneys' fees and costs.

PRAYER

WHEREFORE, the Laborers request this Court award them judgment against the Builders for:

- a. their unpaid overtime wages;
- b. an equal amount as liquidated damages;
- c. reasonable attorney's fees, costs and expenses of this action;
- d. pre-judgment and post-judgment interest at the highest rates allowed by law; and
- e. such other and further relief as may allowed by law.

Respectfully submitted,

TSOSIE & HATCH, PLLC

By: /s/ Paul Tsosie

Paul Tsosie

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

IN RE: OVERTIME ACTION AGAINST:

ZITTING BROTHER CONSTRUCTION,
ET AL.


Defendants

NOTICE OF CONSENT
AVISO DE CONSENTIMIENTO

I the undersigned employee currently or formerly employed by Zitting Brothers Construction, Inc. *et al.* and/or any of its related entities or parties, hereby consent to be a party plaintiff in an action to collect unpaid wages. I agree to be bound by the Professional Services Agreement with Jackman Arredondo, PLLC and Bruckner Burch, PLLC.

Siendo yo un empleado actual o anteriormente empleado por Zitting Brothers Construction, Inc. et al. o sus otras sociedades, partes asociadas, consiento ser un demandante en una acción civil para recuperar salarios no recibidos. Estoy de acuerdo con los términos del Contrato de Servicios Profesionales con Jackman Arredondo, PLLC y Bruckner Burch, PLLC.

Jesús G. Najera Moreno
Full Name (Nombre Completo)


Signature (Firma)

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

IN RE: OVERTIME ACTION AGAINST:

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Manuel Ramirez
Full Name (Nombre Completo)

Manuel Ramirez
Signature (Firma)

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

IN RE: OVERTIME ACTION AGAINST:

ZITTING BROTHERS CONSTRUCTION,
ET AL.

Defendants

NOTICE OF CONSENT
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Jesus Esquivel Barajas

Full Name (Nombre Completo)

Jesus Esquivel Barajas

Signature (Firma)